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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,275	03/13/2001	Daniel Bruce Anderson	ANDD100USA	1225

24339 7590 05/09/2003
JOEL D. SKINNER, JR.
SKINNER AND ASSOCIATES
212 COMMERCIAL ST.
HUDSON, WI 54016

EXAMINER

ARNOLD III, TROY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/09/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/805,275

Applicant(s)

ANDERSON ET AL.

Examiner

Troy Arnold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 depends from cancelled claim 3. Claim 12 recites the limitation "said pouch-like covering" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 15 has minor grammatical errors in lines 5 and 18.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Seiler. Regarding claim 1, Seiler teaches a protective device for eyeglasses comprising a body portion 15 with an edge defining an ingress/egress opening 32 centrally disposed in the body portion and adapted as claimed, and further

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comprising a bow aperture (the open end of 35,36) disposed in the body 15 at an end, and which is adapted for extension therethrough of the bow of the eyeglasses to the exterior of the body portion (at least some of the bow will be able to protrude from the opening at the end of 36, when the bow is inserted into item 35 oppositely from the direction shown in Fig 6) while the remainder of the eyeglasses are in the interior pouch, whereby the body protects the eyeglasses and the bow is accessible on the exterior of the body as claimed. Regarding claims 4-6, see column 4, beginning line 19 of Seiler. Regarding claim 7, Seiler teaches a protective device with a body portion 15 with lengthwise and widthwise dimensions and opposing end portions as claimed, an opening 32 centrally disposed with respect to the dimensions with a predetermined area, and wherein the bow aperture (end of 35,36) is disposed in a predetermined position proximate one end portion of the body portion 15 and has an area substantially less than the opening 32 such that only the bow can extend through it. Regarding claims 9 and 11, see items 37-39. Regarding claims 12 and 13, a side portion will serve as a "display portion" of the covering of Seiler, and its color will constitute an aesthetic design.

Claims 10 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Seiler. Seiler teaches all of the limitations in claims 10 and 15 except the band being elastic. It is submitted that Seiler's band 37 will inherently be elastic to some degree. If not, it would have been obvious to make it so for the purpose of ensuring more secure closure of the opening 32.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seiler in view of Official Notice. Seiler teaches all the limitations of claim 14 except for the display portion including promotional material. Official Notice is taken that promotional material - brand names, logos, monograms, etc – on objects is old obvious and well known in a wide variety of arts. It would have been obvious to incorporate such material onto the display portion of Eastman's device for the purpose of personalizing it. Furthermore, such promotional material is essentially an arbitrary design choice, and not patentable.

Response to Arguments

Applicant's arguments filed 20 February 2003 are moot in view of the new grounds of rejection. It is submitted that the Seiler reference teaches all of the limitations claimed in the modified claims, or it would have been obvious to modify his invention so that it did, as noted in the rejections above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Arnold whose telephone number is 703-305-0621. The examiner can normally be reached on Tuesday-Thursday, 9:30-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-0302 for regular communications and 703-872-9303 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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Troy Arnold
Examiner
Art Unit 3728

TGA
April 23, 2003



Mickey Yu
Supervisory Patent Examiner
Group 3700